IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8264 OF 2005

Ashok Namdeo Mate] .. Petitioner

Versus

1. Tukaram Dattu Mate & 3 ors.] .. Respondents

Mr. V.Z. Kankaria for the petitioner.

Mr. N.V. Walawalkar, senior counsel with Mr. S.G. Karandikar for the respondent No.1.

Mr. Y.S. Jahagirdar, senior counsel with Mr. Girish S. Godbole for the respondent No.2.

Mr. C.R. Sonawane, AGP, for the respondents No.3 & 4.

CORAM: S.B. MHASE &
D.G. KARNIK, JJ.

DATED: 02ND AUGUST, 2007

P.C. :

1. By this Petition, the petitioner challenges the order dated 13th January, 2004, passed in Review by the respondent No.4.

2. The petitioner, being a holder of urban lands, filed a return under Section 6 of the Urban Land (Ceiling & Regulation) Act, 1976 (for short "the ULC Act"). An order under Section 8(4) of the ULC Act was passed by the competent authority on 26th April, 1985.

After appeal, the State Government undertook suo moto revision under Section 34 of the ULC Act. By an order dated 19th March, 2001, passed in Revision the State Government partially modified the appellate order and also issued certain directions. Thereafter, on the application of respondent No.1, the State Government reviewed its own order dated 19th March, 2001 by its order dated 13th January, 2004. That order is impugned in this Writ Petition.

3. The ULC Act contemplates an initial order to be passed by the competent authority under Section 8 (c) determining surplus land. The order is appealable under Section 33 of the ULC Act. An order passed in appeal can be revised by the Government under Section 34 of the ULC Act. No power of review conferred on the State Government in respect of any order passed by it under Section 34. In other words, the order passed in revision is final and subject only to the Writ jurisdiction of this Court. The order dated 13th January, 2004, is passed in purported exercise of the power of review.

4. It is settled principle of law that power of review is not an inherent power and must be conferred by law either specifically or by necessary implication.

Learned counsel for the respondents were unable to point out any provision of the ULC Act conferring power on the Government to review its own order passed under Section 34 of the Act, either specifically or by necessary implication. In the circumstances, the order dated 13th January, 2004, passed in purported exercise of power of review is clearly without jurisdiction.

5. Mr. C.R. Sonawane, learned Assistant Government Pleader appearing for the respondents 3 and 4 invited our attention to the decision of the Division Bench of this Court in **Trimbakrao Shahurao Deshmukh Vs. Ahmednagar District Central Cooperative Bank Limited** (Writ Petition No.5699 of 2005 decided on 21st August, 2006; Coram: Gokhale H.L. and Devadhar J.P., JJ) and submitted that the power of review was exercised to correct the mistakes and errors in the original order. In paragraph No.6 of the decision, the Division Bench has observed as follows.

> "If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of the mistake and scope of

> rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The later is available where the mistake is of the Court."

6. In our view, this passage rather supports the petitioner than the respondent. It is nobody's case that the State Government had exercised the power of revision without having any jurisdiction to do so. The order dated 19th March, 2001, was clearly an order with jurisdiction exercising the powers of revision under Section 34 of the ULC Act. The review was not for the purpose of correcting any jurisdictional error. In the circumstances, we are of the view that the State Government had no power of reviewing its own order passed under Section 34 of the Act.

7. The Petition, therefore, succeeds. The impugned order dated 13th January, 2004, passed by the respondent No.4 is hereby quashed and set aside. Rule is made absolute to the extent indicated above.

Sd/-
[D.G. KARNIK, J.]

Sd/-
[S.B. MHASE, J.]